IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 17782 of 2007(P)

PETITIONERS:
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1. PRATHEEP, VILAYIL VEEDU,
KADAKKAL VILLAGE, KOTTARAKKARA TALUK,
KOLLAM DISTRICT.

2. ANI, BAB SAHIB NAGAR,
KARAMOODU MURI, PATHANAPURAM VILLAGE,
PATHANAPURAM TALUK.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:
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1. THE DEPUTY SUPERINTEDENT OF POLICE,
PUNALUR.

2. THE CIRCLE INSPECTOR OF POLICE,
ANCHAL.

3. THE SUB INSPECTOR OF POLICE,
ANCHAL.

4. THE ASSISTANT EXCISE COMMISSIONER,
KOLLAM.

5. PRATHEEPKUMAR, PRAYAG,
KANNANCODE, KARUKONE P.O.,
KOTTARAKKARA TALUK.

6. VINODKUMAR, MADHAVA VILASOM,
KANNANCODE, KARUKONE P.O.,
KOTTARAKKARA TALUK.

7. RAJASEKHARAN NAIR,
KOTTAVILA VEEDU, KANNANCODE,
KARUKONE P.O., KOTTARAKKARA TALUK.

8. DIVAKARAN PILLAI, KOTTAVILA VEEDU,
KANNANCODE, KARUKONE P.O.,
KOTTARAKKARA TALUK.

9. SIJINI WILSON, KOTTAVILA VEEDU,
KANNANCODE, KARUKONE P.O., KOTTARAKKARA TALUK.

10. MOHAMMED KASIM, KOTTAVILA VEEDU,
KANNANCODE, KARUKONE P.O., KOTTARAKKARA TALUK.

11. ALEX, VALUKKARIKKATHIL,
KANNANCODE, KARUKONE P.O., KOTTARAKKARA TALUK.

12. LATHEEFA BEEVI, LAILA MANZIL,
KANNANCODE, KARUKONE P.O., KOTTARAKKARA TALUK.

BY ADV. SRI.B.MOHANLAL- R5 TO R12
GOVT. PLEADER SRI.P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXTS.

EXT.P1 – TRUE COPY OF THE LICENCE DATED 03.06.2007.

EXT.P2 - TRUE COPY OF THE REPRESENTATION DATED 06.06.2007 FILED BEFORE THE SUB INSPECTOR OF POLICE.

RESPONDENTS' EXTS.

EXT.R5(A) THE TRUE COPY OF THE BURIAL GROUND LICENCE ISSUED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA DATED 25.01.1977 AND THE COMPLAINT FILED BY THE VICAR, JERUSALEM MARTHOMA CHURCH, KANNANCODE TO THE DISTRICT COLLECTOR, KOLLAM DATED 15.06.2007.

EXT.R5(B) – THE TRUE COPY OF THE MASS REPRESENTATION DATED 17.06.2007.

EXT.R5(C) – THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY, ALAYAMON GRAMA PANCHAYAT NO.C6/361/2007 DATED 15.06.2007.

EXT.R5(D) – THE TRUE COPY OF THE INTERIM INJUNCTION IN I.A. NO.1011/2007 IN O.S.NO.213/2007 DATED 21.06.2007.

/TRUE COPY/

P.R. RAMAN & K. HEMA, JJ.
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W.P.(C) NO. 17782 OF 2007
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DATED THIS, THE 28TH DAY OF JUNE, 2007.

O R D E R

Raman, J.

Petitioners were issued with Ext.P1 license for running a toddy shop at Chennappetta. According to them, when they attempted to run the toddy shop strictly in accordance with the license conditions, Respondents 5 to 12 and their men caused physical obstruction, as a result of which petitioners could not open the shop. Even though they approached the police seeking protection, police did not give any help and hence they have come up with this writ petition.

2. Respondents 5 to 12 filed a detailed counter affidavit. According to them, there is no building numbered by the panchayat for starting any toddy business. Reliance was placed on Ext.R5(c) dated 15.6.2007, which is a proceedings of the Secretaryy, Alayamon Grama Panchayat Office to show that no number was allotted to the building situated in the property in Sy. No. 553/1/A of Alayamon Village. It is also stated in the counter affidavit that the toddy shop in question is located near a Church, burial

ground and a Scheduled Caste Colony, within the prohibitory distances as contemplated under Rule 7 of the Abkari Shops Disposal Rules and therefore, the petitioners cannot conduct any business in toddy in the proposed premises. Ext.R5(b) is a mass petition signed by the local residents, submitted to the District Collector with copy to the Assistant Excise Commissioner. It is also contended that the Church is not made a party to the writ petition. But it is rightly submitted by the petitioners that they have not caused any obstruction and as such they were not made a party.

3. In the light of the proceedings Ext.R5(c) and the mass petition submitted as per Ext.R5(b) and in view of the specific objection that the proposed toddy shop is situated within the prohibited area, necessarily, adjudication of the disputed questions of fact has to be made by the competent authority. The 4th respondent Assistant Excise Commissioner being the Authority under the Abkari Shops Disposal Rules, there will be a direction to him to consider and dispose of Ext.R5(b) in accordance with law, after hearing the petitioners as also the objectors. Since this is a mass petition, individual notice need be issued only to the 5th respondent and a public notice be given so as to enable any objector to come on record which will be sufficient compliance as far as the notice part is concerned.

The Assistant Excise Commissioner will inspect the proposed site and ascertain the fact as to whether the proposed toddy shop is situated within the prohibited distance of any burial ground or any institutions as is referred to under Rule 7 of the Rules and also as to whether the building is numbered by the panchayat. He shall pass appropriate orders and communicate the same to the petitioners.

Petitioner shall produce a copy of this order before the Assistant Excise Commissioner for information and compliance.

Post after three weeks.

(Hand over the Order)

P.R. RAMAN,
(JUDGE)

K. HEMA,
(JUDGE)

knc/-